

REMARKS

Claims 2, 5, 6, 8, and 11-24 are pending in the present application. Claims 11 and 12 have been amended to provide antecedent basis for certain claim terms; to add the limitation of a human newborn or human fetal subject; and to clarify the patient population to receive the analgesic. Support for the amendments to claim 11 and 12 can be found in original claim 3, page 1, line 8; page 3, line 5; page 1, lines 8-16; page 2, lines 4-6. Claim 3 has been cancelled as the subject matter of this claim has been incorporated into claim 1.

Examiner Interview

Applicants wish to thank Examiners Arnold and Richter for the courtesies extended during the in-person interview of May 27, 2009. Applicants discussed claims 11 and 12 and how to define the patient population in need of analgesia. The references Fukara, Lane and Georgieff were discussed.

Rejection of Claims Under 35 U.S.C. 102 by Fukara

Claims 2, 6, 11-13 and 17 stand rejected as being allegedly anticipated by Fukara et al. (Prog. Neuro-Psychopharmacol. & Biol Psychiat., 2004, 24, 1357-1368) (“Fukara”). Applicants traverse this rejection.

The above-referenced claims recite providing analgesia to a human newborn or fetal subject who is experiencing enough stress or pain to necessitate administration of an analgesic (xenon). Fukara does not describe this limitation. For at least these reasons, Applicants submit that Fukara does not anticipate claims 11 and 12 (and all claims that depend therefrom) and Applicants request withdrawal of this rejection.

Rejection of Claims Under 35 U.S.C. 102 by Lane

Claims 12, 17 and 21 stand rejected as being allegedly anticipated by Lane et al. (Science 190, 210(4472), 899-901) (“Lane”). Applicants traverse this rejection.

The above-referenced claims recite providing analgesia to a human newborn or fetal subject who is experiencing enough stress or pain to necessitate administration of an analgesic (xenon). Lane does not describe this limitation. For at least these reasons, Applicants submit that

Lane does not anticipate claims 11 and 12 (and all claims that depend therefrom) and Applicants request withdrawal of this rejection.

Rejection of Claims Under 35 U.S.C. 103 by Fukara in view of Georgieff, Fishman, Ohashi and Franks

Claims 2, 3, 5, 6, 8 and 11-24 stand rejected as being allegedly rendered obvious by Fukara in view of U.S. Patent No. 6,197,323 to Georgieff (“Georgieff”), U.S. Patent No. 5,099,834 to Fishman (“Fishman”), Anesthesiology 96 A1291 (2002) to Ohashi (“Ohashi”) and with respect to claims 5 and 24, U.S. Patent No. 6,274,633 to Franks (“Franks”). Applicants traverse this rejection.

As Applicants state above, Fukara does not describe administering xenon to a human newborn or fetal subject who is experiencing pain or stress sufficient to necessitate administration of an analgesic. Further, neither Georgieff, Fishman nor Franks describe this subject matter. Georgieff is directed to a liquid xenon emulsion that can be used as an anesthetic (See Abstract). There is no indication in Georgieff of using xenon as an analgesic in a human fetal or newborn subject who is experiencing pain or stress sufficient to necessitate administration of an analgesic. With respect to Fishman, this reference does not cure the deficiencies of Georgieff as this reference does not describe using xenon to provide analgesia to a newborn or fetal subject in need thereof. Rather, Fishman mentions using xenon as an anesthetic throughout (See e.g., Abstract; col. 2, lines 54-55; col. 4, lines 28-30; and col. 5, lines 37-43). With respect to Ohashi, this reference is not prior art as established by Applicants in their response of September 14, 2007. Regarding Franks, this reference describes using xenon as an NMDA antagonist and does not describe using xenon as an analgesic agent in newborns and fetal subjects in need thereof. For at least these reasons, Applicants submit that the above-referenced claims are not rendered obvious by Fukara, Georgieff, Fishman, or Franks either alone or in combination and Applicants request withdrawal of this rejection.

CONCLUSION

It is respectfully submitted that the present application is now in condition for allowance, which action is respectfully requested. The Examiner is invited to contact Applicants' representative to discuss any issue that would expedite allowance of the subject application.

Any fees for extension(s) of time or additional fees required in connection with the filing of this response, are hereby petitioned under 37 C.F.R. § 1.136(a), and the Commissioner is authorized to charge any such required fees or to credit any overpayment to Kenyon & Kenyon's Deposit Account No. 11-0600.

Respectfully submitted,
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